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IN THE UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY FRICKER COMPANY, INC.,  
PAUL L. ETZOLD; AND  
MARY L. ETZOLD,

Defendants,

CIVIL ACTION NO.

86-8384-WJR(TX)

CONSENT DECREE

FILED

FEB 14 1991

CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
BY DEPUTY

ENTERED

FEB 15 1991

CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
BY DEPUTY

1  
2 WHEREAS, the United States of America ("United States"  
3 or "Plaintiff"), on behalf of the Administrator of the United  
4 States Environmental Protection Agency ("EPA"), filed the  
5 Complaint in this action on December 23, 1986, against Larry  
6 Fricker Company, Inc., Paul L. Etzold and Mary L. Etzold  
7 ("Defendants"), pursuant to Section 107 of the Comprehensive  
8 Environmental Response, Compensation, and Liability Act  
9 ("CERCLA"), 42 U.S.C. § 9607, as amended, to recover costs  
10 incurred by the United States in responding to alleged releases  
11 or threatened releases of hazardous substances at the Larry  
12 Fricker Company, Inc. facility located at 1421 North State  
13 College Boulevard, Anaheim, California (the "facility");

14 WHEREAS, the United States and Defendants agree that  
15 settlement of this action and entry of this Consent Decree  
16 without further litigation is the most appropriate means of  
17 resolving this matter and is in the public interest;

18 NOW, THEREFORE, without adjudication of any issue of  
19 fact or law, and upon consent of the parties hereto, it is hereby  
20 ORDERED, ADJUDGED and DECREED as follows:

21 I. JURISDICTION

22 1. This Court has jurisdiction of the subject matter  
23 and has personal jurisdiction over the parties hereto pursuant to  
24 28 U.S.C. §§ 1331, 1345, 1355 and 1395(a), and 42 U.S.C. §§  
25 9607(a) and 9613(b). The Complaint of the United States states a  
26 claim upon which relief can be granted. ~~The Parties hereto agree~~ WJR

WJR

1 ~~claim upon which relief can be granted.~~ The Parties hereto agree  
2 to be bound by the terms of this Consent Decree and not to  
3 contest its validity in any subsequent proceeding.

4 II. PARTIES BOUND

5 2. This Consent Decree shall be binding upon  
6 Defendants, their officers, directors, agents, servants,  
7 employees, successors in interest and assigns, and upon all  
8 persons, firms, subsidiaries, divisions, and corporations acting  
9 under or for them and upon the United States on behalf of the  
10 U.S. EPA. Each undersigned representative of Defendants  
11 certifies that he or she is fully authorized to enter into and  
12 execute this Consent Decree, and to bind Defendants to this  
13 Decree.

14 III. DEFINITIONS

15 3. Certain terms used in this Consent Decree are  
16 defined as follows:

17 a. "Larry Fricker facility" or "Larry Fricker  
18 site" or "facility" or "site" means the property located at 1421  
19 North State College Boulevard, Anaheim, California;

20 b. "Response Costs" means all cleanup costs,  
21 including administrative, investigative, and legal expenses  
22 (including enforcement costs) and prejudgment interest relating  
23 to the response action, incurred by the United States in  
24 connection with the Larry Fricker site pursuant to CERCLA,  
25 beginning in June 1985, up to and including the date of entry of  
26 this Consent Decree;

1                   c. "Parties" means Defendants and the United  
2 States of America.

3                   d. Terms not otherwise defined herein shall have  
4 their ordinary meaning unless defined in CERCLA 42 U.S.C. §  
5 9601, et seq in which case the definition in CERCLA shall  
6 control.

7                   IV. REIMBURSEMENT FOR RESPONSE COSTS

8                   4. Defendants agree to pay the principal sum of  
9 \$200,000 plus interest thereon at 7% per annum in equal monthly  
10 installments of \$5000, as provided in Schedule I, attached  
11 hereto, to the United States to settle all claims alleged against  
12 them in the Complaint.

13                   5. Payment shall be made by certified check made  
14 payable to the "EPA Hazardous Substances Superfund" and remitted  
15 to the United States Environmental Protection Agency-Superfund  
16 Lockbox, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251. The  
17 transmittal of such payment(s) shall reference that the payment  
18 is for Response Costs incurred at the Larry Fricker facility and  
19 shall be accomplished by correspondence containing the following  
20 identifying information: United States v. Larry Fricker Company,  
21 Inc. et. al, Civil Action No. 86-8384-WJR(TX), (C.D. Cal.)  
22 Department of Justice File No. 90-11-3-158, EPA Site Number  
23 TJB09D5A6, Larry Fricker Company, Inc. and the name and complete  
24 address of the paying party. Defendants shall send copies of the  
25 transmittal letter and a photostatic copy of its check to the  
26 Regional Counsel, Region IX, United States Environmental

1 Protection Agency, Enforcement Section, 215 Fremont Street, San  
2 Francisco, California 94105 and the Land and Natural Resources  
3 Division, U.S. Department of Justice, Washington, D.C. 20530,  
4 attention DOJ file number 90-11-3-158, when payment is made.

5 6. Defendant Larry Fricker Co., Inc. shall secure its  
6 performance hereunder by executing and delivering concurrently  
7 herewith a promissory note secured by the inventory and assets,  
8 including but not limited to accounts receivable, equipment,  
9 machinery and all real and personal property of the Larry Fricker  
10 Co., Inc. in a form acceptable to the United States.

11 7. Defendants Larry Fricker Company, Inc., Paul L.  
12 Etzold, and Mary L. Etzold shall secure their performance  
13 hereunder by executing and delivering concurrently herewith a  
14 note and deed of trust upon that certain parcel of real property  
15 located on Vesper Road in the Valley Center area of San Diego  
16 County, Assessors Parcel No. 188-290-01, as more particularly  
17 described in Attachment A hereto and a note and deed of trust  
18 upon the real property presently occupied by the Larry Fricker  
19 Co. commonly known as 1421 North State College Boulevard,  
20 Anaheim, California as more particularly described in Attachment  
21 B hereto.

22 8. In the event Defendants fail to make any payment or  
23 perform any other act required by this Consent Decree within the  
24 time specified herein, the United States shall, upon regularly  
25 noticed motion, be entitled to have judgment entered by the Court  
26 in the amount of \$310,000, being all fees, costs and interest

1 claimed in this matter, less a credit for all payments having  
2 then been made by Defendants. Defendants may cure any default  
3 hereunder by payment of all sums due and owing as of the date of  
4 payment plus a 20 percent penalty on the outstanding sum at any  
5 time within 60 days of the due date.

6 9. In the event of a default as described above and  
7 the entry of judgment as provided herein, Defendants acknowledge  
8 that Plaintiff shall be entitled to, and is authorized to, obtain  
9 a writ of execution or to take any other action at law to enforce  
10 said judgment, in addition to taking title to the real and  
11 personal property provided as security in paragraphs 6 and 7  
12 above.

13 10. Upon the completion of payments totalling the sum  
14 of one hundred and fifty thousand dollars (\$150,000), the United  
15 States will seek to satisfy judgment hereunder against Defendants  
16 Paul L. Etzold and Mary L. Etzold only by exercising its rights  
17 against Defendants' interest in the real property described in  
18 paragraph 7 or their interest in the assets and inventory of the  
19 Larry Fricker Company, Inc.

20 V. EFFECT OF CONSENT DECREE

21 11. The parties enter into this Consent Decree and  
22 submit it to the Court for approval and entry, and agree that  
23 upon receipt of all payments required herein, each Defendant  
24 shall be deemed to have fully and completely satisfied the  
25 requirements of this Consent Decree.  
26

1           12. Nothing in this Consent Decree is intended as a  
2 covenant not to sue or release from liability for any person or  
3 entity not a signatory to this Decree. The United States  
4 reserves all claims, demands, and causes of action, either  
5 judicial or administrative, past or future, in law or in equity,  
6 against any person or entity not a Party to this Decree for any  
7 matter arising, or that has arisen, at the Fricker Site.

8           13. The terms of this Consent Decree shall not inure  
9 to the benefit of, nor be enforceable by, any person or entity  
10 not a signatory hereto. Defendants reserve all common law and  
11 statutory rights against entities not a party to this Decree,  
12 including but not limited to rights of contribution or  
13 indemnification.

#### 14                           VI. WAIVER OF CLAIMS

15           14. In consideration of the entry of this Consent  
16 Decree, Defendants agree not to make any claims against the  
17 Hazardous Substances Superfund established by 26 U.S.C. § 9507,  
18 including any claim pursuant to Sections 106(b)(2), 111, and 112  
19 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611 and 9612, or any other  
20 provision of law, directly or indirectly, for response costs or  
21 for attorney's fees related to this action and this Consent  
22 Decree. Nothing in this Consent Decree shall be deemed to  
23 constitute a preauthorization of a CERCLA claim within the  
24 meaning of 40 C.F.R. § 300.25(d).

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3                   VII. RESERVATION OF RIGHTS

4           15. The United States reserves all claims, demands and  
5 causes of action, past or future, judicial or administrative, in  
6 law or equity, that it may have or which may yet accrue against  
7 Defendants with respect to response costs not covered by this  
8 Consent Decree, and claims not specifically addressed in the  
9 Complaint in this action. All claims or defenses which the  
10 Plaintiff or Defendants may have against any other person or  
11 entity not a party to this Consent Decree, including but not  
12 limited to, claims for indemnity or contribution pursuant to  
13 Section 113(f) of CERCLA, are expressly reserved. Nothing  
14 contained herein shall in any way limit or restrict the response  
15 authorities of the United States under applicable law, including,  
16 but not limited to Sections 104 and 106 of CERCLA, 42 U.S.C. §§  
17 9604 and 9606, or the ability to recover, pursuant to Section 107  
18 of CERCLA or other applicable law, future response costs.

19           16. Nothing contained in this Decree shall be  
20 construed to limit the right of the United States to take legal  
21 or administrative action to enforce federal or state  
22 environmental laws.

23                   VIII. MODIFICATION

24           17. There shall be no modification of this Consent  
25 Decree except by written agreement of the parties and approval by  
26 the Court.

1  
2  
3 IX. RETENTION OF JURISDICTION

4 18. This Consent Decree represents final judgment in  
5 this action under Rule 54 of the Federal Rules of Civil  
6 Procedure, and this Court retains jurisdiction over this Decree  
7 to enforce, construe, implement, modify, terminate, or reinstate  
8 the terms of the Decree, or to provide any further relief as the  
9 interests of justice may require, consistent with this Decree.

10 19. The obligations of Defendants under this Consent  
11 Decree shall terminate upon written confirmation by the United  
12 States to the Court that Defendants' obligations pursuant to this  
13 Decree have been satisfied.

14 20. Upon execution of this Consent Decree by all  
15 parties, it shall be lodged with the Court, during which time  
16 notice of this Decree shall be published in the Federal Register.  
17 Such notice shall provide for a period of thirty (30) days for  
18 public comment, pursuant to 28 C.F.R. § 50.7. The Consent Decree  
19 shall not be approved by the Court (i.e., "entered") until the  
20 United States certifies upon the expiration of the 30 day period  
21 that it consents to entry. The United States reserves the right  
22 to withdraw or withhold its consent to a judgment based on this  
23 Consent Decree if the comments concerning this Decree disclose  
24 facts or considerations which indicate this Decree is  
25 inappropriate, improper, or inadequate. All parties reserve the  
26 right to oppose an attempt by any person to intervene in this  
action. Comments on the Consent Decree shall be submitted to:

1 Lourdes G. Baird  
2 United States Attorney  
3 312 Spring Street  
4 Los Angeles, CA 90012

5 and

6 David T. Buente, Chief  
7 Environmental Enforcement Section  
8 Environment and Natural Resources  
9 Division  
10 U.S. Department of Justice  
11 Washington, D.C. 20530  
12 Attention DOJ file 90-11-3-158

13 X. EFFECTIVE DATE

14 21. The Consent Decree shall be effective on the date  
15 that it is entered by the Court.

16 XI. SUBMITTAL TO THE COURT

17 22. The Parties by their duly authorized  
18 representatives have executed this Consent Decree and submit it  
19 to the Court that it may be approved and entered.

20 FOR PLAINTIFF

21 Date: 12/12/90

22 By: Rich Van Cleave for

23 RICHARD B. STEWART  
24 Assistant Attorney General  
25 Environment and Natural Resources  
26 Division  
U.S. Department of Justice  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

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Date: 10/31/90

By: Phillip A. Brooks

PHILLIP A. BROOKS  
Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-5270

LOURDES G. BAIRD  
United States Attorney  
FREDERICK M. BROSIO, JR.  
Assistant United States Attorney  
Chief, Civil Division

Date: 12-21-90

By: Jon Pearson

JON PEARSON  
Assistant United States Attorney  
1100 United States Courthouse  
312 North Spring Street  
Los Angeles, California 90012  
(213) 894-2285

Date: 9.13.90

By: Daniel A. McGovern

DANIEL A. MCGOVERN  
Regional Administrator  
Region IX  
U.S. Environmental Protection  
Agency  
1235 Mission Street  
San Francisco, California 94103

Date: 9.12.90

By: Allyn Stern

ALLYN STERN  
U.S. Environmental Protection  
Agency  
Assistant Regional Counsel  
1235 Mission Street  
San Francisco, California 94103

FOR DEFENDANTS

Date: 8-23-90

By: Mark Cain  
MARK S. CAIN  
Duffern H. Helsing, Inc.  
505 N. Tustin Avenue  
Suite 150  
Santa Ana, California 92705  
Attorney for the Larry Fricker  
Company, Inc.  
Paul Etzold and Mary Etzold

Date: 8-23-1990

By: Paul L. Etzold  
PAUL ETZOLD, President  
Larry Fricker Company, Inc.

Date: 8-28-90

By: Mary L. Etzold  
MARY L. ETZOLD

Date: 8-23-1990

By: Paul L. Etzold  
PAUL L. ETZOLD

APPROVED AND ENTERED THIS 13<sup>th</sup> DAY OF February, 1989.

United States District Judge  
Central District of California

# SCHEDULE I

Debt Payment      \$200,000.00      Starting 10/1/88  
 \$5,000.00      Interest Rate 7.00%

	<u>Month</u>	<u>Begin Bal</u>	<u>End Bal</u>	<u>Total Paid</u>	<u>Interest</u>	<u>Principal</u>
1	7/1/89	\$200,000.00	200,000.00	5,000.00	5,000.00	0.00
2	8/1/89	\$200,000.00	200,000.00	5,000.00	5,000.00	0.00
3	9/1/89	\$200,000.00	197,875.33	5,000.00	2,875.33	2,124.67
4	10/1/89	\$197,875.33	194,029.60	5,000.00	1,154.27	3,845.73
5	11/1/89	\$194,029.60	190,161.44	5,000.00	1,131.84	3,868.16
6	12/1/89	\$190,161.44	186,270.71	5,000.00	1,109.28	3,890.72
7	1/1/90	\$186,270.71	182,357.29	5,000.00	1,086.58	3,913.42
8	2/1/90	\$182,357.29	178,421.04	5,000.00	1,063.75	3,936.25
9	3/1/90	\$178,421.04	174,461.83	5,000.00	1,040.79	3,959.21
10	4/1/90	\$174,461.83	170,479.53	5,000.00	1,017.69	3,982.31
11	5/1/90	\$170,479.53	166,473.99	5,000.00	994.46	4,005.54
12	6/1/90	\$166,473.99	162,445.09	5,000.00	971.10	4,028.90
13	7/1/90	\$162,445.09	158,392.69	5,000.00	947.60	4,052.40
14	8/1/90	\$158,392.69	154,316.64	5,000.00	923.96	4,076.04
15	9/1/90	\$154,316.64	150,216.82	5,000.00	900.18	4,099.82
16	10/1/90	\$150,216.82	146,093.09	5,000.00	876.26	4,123.74
17	11/1/90	\$146,093.09	141,945.30	5,000.00	852.21	4,147.79
18	12/1/90	\$141,945.30	137,773.31	5,000.00	828.01	4,171.99
19	1/1/91	\$137,773.31	133,576.99	5,000.00	803.68	4,196.32
20	2/1/91	\$133,576.99	129,356.19	5,000.00	779.20	4,220.80
21	3/1/91	\$129,356.19	125,110.77	5,000.00	754.58	4,245.42
22	4/1/91	\$125,110.77	120,840.58	5,000.00	729.81	4,270.19
23	5/1/91	\$120,840.58	116,545.48	5,000.00	704.90	4,295.10
24	6/1/91	\$116,545.48	112,225.33	5,000.00	679.85	4,320.15
25	7/1/91	\$112,225.33	107,879.98	5,000.00	654.65	4,345.35
26	8/1/91	\$107,879.98	103,509.28	5,000.00	629.30	4,370.70
27	9/1/91	\$103,509.28	99,113.08	5,000.00	603.80	4,396.20
28	10/1/91	\$99,113.08	94,691.24	5,000.00	578.16	4,421.84
29	11/1/91	\$94,691.24	90,243.61	5,000.00	552.37	4,447.63
30	12/1/91	\$90,243.61	85,770.03	5,000.00	526.42	4,473.58
31	1/1/92	\$85,770.03	81,270.35	5,000.00	500.33	4,499.67
32	2/1/92	\$81,270.35	76,744.43	5,000.00	474.08	4,525.92
33	3/1/92	\$76,744.43	72,192.11	5,000.00	447.68	4,552.32
34	4/1/92	\$72,192.11	67,613.23	5,000.00	421.12	4,578.88
35	5/1/92	\$67,613.23	63,007.64	5,000.00	394.41	4,605.59
36	6/1/92	\$63,007.64	58,375.18	5,000.00	367.54	4,632.46
37	7/1/92	\$58,375.18	53,715.70	5,000.00	340.52	4,659.48
38	8/1/92	\$53,715.70	49,029.05	5,000.00	313.34	4,686.66
39	9/1/92	\$49,029.05	44,315.05	5,000.00	286.00	4,714.00
40	10/1/92	\$44,315.05	39,573.55	5,000.00	258.50	4,741.50
41	11/1/92	\$39,573.55	34,804.40	5,000.00	230.85	4,769.15
42	12/1/92	\$34,804.40	30,007.42	5,000.00	203.03	4,796.97
43	1/1/93	\$30,007.42	25,182.47	5,000.00	175.04	4,824.96
44	2/1/93	\$25,182.47	20,329.37	5,000.00	146.90	4,853.10
45	3/1/93	\$20,329.37	15,447.95	5,000.00	118.59	4,881.41
46	4/1/93	15,447.95	10,538.07	5,000.00	90.11	4,909.89
47	5/1/93	10,538.07	5,599.54	5,000.00	61.47	4,938.53

48	6/1/93	5,599.54	632.20	5,000.00	32.66	4,967.34
49	7/1/93	632.20	0.00	635.89	3.69	632.20

Attachment A

That parcel of the Northwest quarter of the Southeast quarter of Section 8, Township 11 South Range 1 West, San Bernardino Meridian, in the County of San Diego, State of California, according to the United States Government Survey of September 21, 1875.

Beginning at the Northwest corner of the Northwest quarter of the southeast quarter of said Section; thence North 87° 47' East along the Northerly line thereof a distance of 559.75 feet; thence South 0° 19' 30" West parallel with the Westerly line of said Southeast quarter a distance of 1303; thence South 87° 47' West parallel with the Northerly line of said Southeast quarter a distance 559.75' to the Westerly line of said Southeast quarter; thence North of 19' 30" along said Westerly line a distance of 1303 feet to the point of beginning.

Attachment B

PARCEL I:

The West 100 feet of that portion of the South half of Lot 7 of the Golden State Tract No. 2, in the City of Anaheim, as per map recorded in book 4, page 68 of Miscellaneous Maps, in the office of the County Recorder of said County, described as follows:

Beginning at a point on the North line of said South half, being on the Westerly right of way line of Cypress Avenue, also North 89° 06' 00" West 53.00 feet from the center line of said Cypress Avenue; thence North 89° 06' 00" West 269.53 feet along said North line; thence South 0° 00' 50" West 233.81 feet parallel with the East line of said Lot 7 to the Northerly right of way line of the Houston Freeway; thence North 75° 49' 58" East 198.55 feet along said Northerly right of way line to an angle point; thence North 44° 36' 28" East 99.70 feet to an intersection with said Westerly right of way line of Cypress Avenue; thence North 3° 39' 50" East 110.23 feet to the point of beginning.

PARCEL II:

A non-exclusive easement for ingress and egress, public utilities and incidental purposes, over the North 20 feet of that portion of the South half of Lot 7 of the Golden State Tract No. 2, as per map recorded in book 4, page 68 of Miscellaneous Maps, in the office of the County Recorder of said County, described as follows:

Beginning at a point of the North line of said South half, being on the Westerly right of way line of Cypress Avenue, also North 89° 06' 00" West 53.00 feet from the center line of said Cypress Avenue; thence North 89° 06' 00" West 269.53 feet along said North line; thence South 0° 00' 50" West 233.81 feet parallel with the East line of said Lot 7 to the Northerly right of way line of the Houston Freeway; thence North 75° 49' 58" East 198.55 feet along said Northerly right of way line to an angle point; thence North 44° 36' 28" East 99.70 feet to an intersection with said Westerly right of way line of Cypress Avenue; thence North 3° 39' 28" East 99.70 feet to an intersection with said Westerly right of way line of Cypress Avenue; thence North 3° 39' 50" East 110.23 feet to the point of beginning.

Except the West 100 feet thereof.